

FRED E. HARDING

IBLA 94-876

Decided October 16, 1997

Appeal from a Decision of the Colorado State Office, Bureau of Land Management, declaring lode mining claim null and void ab initio. CMC 246326.

Set aside and remanded.

1. Boundaries--Federal Land Policy and Management Act of 1976: Wilderness--Mining Claims: Lands Subject to--Mining Claims: Location--Mining Claims: Lode Claims--Mining Claims: Withdrawn Land--Wilderness Act--Withdrawals and Reservations: Effect of

Where BLM has declared a lode mining claim null and void ab initio due to its location on land withdrawn from the operation of the mining laws as part of the National Wilderness Preservation System, but BLM's own plat map indicates that the claim is not located entirely on lands withdrawn from the operation of the mining laws, the Board will set aside the BLM Decision and remand the case to BLM to determine the extent to which the claim and the point of discovery are situated on lands outside the wilderness area.

APPEARANCES: Fred E. Harding, pro se.

OPINION BY ADMINISTRATIVE JUDGE TERRY

Fred E. Harding has appealed from a Decision of the Colorado State Office, Bureau of Land Management (BLM), dated September 7, 1994, declaring the Harding Falls No. 1 Lode mining claim, CMC 246326, null and void ab initio. The Decision stated that Appellant located this claim on land withdrawn from appropriation under the general mining laws, pursuant to the Wilderness Act of September 3, 1964, 16 U.S.C. § 1131 (1994), by Pub. L. No. 96-560, 94 Stat. 3266, on December 22, 1980, effective January 1, 1984.

The location notice for this claim, dated November 16, 1993, shows the claim overlapping across the boundary between secs. 7 and 8, within T. 12 S., R. 82 W., Sixth Principal Meridian, in Chaffee County, Colorado. The BLM plat map in the case file shows an irregular withdrawal boundary for the Collegiate Peaks Wilderness trending generally north-south near the boundary between secs. 7 and 8. An approximate pencil-drawn indication of the position of Appellant's claim on the BLM plat map shows a corner portion of the claim outside the wilderness area.

Appellant brought this appeal, asserting that his claim is not located within a wilderness area, although he did not submit additional evidence in support of his position. Appellant argues that an 1888 survey in the claim area was so poorly done that Appellant was obliged to base his land description on his "own private survey," describing the location of the claim by reference to corners of private and patented property. He also argues that BLM was insufficiently acquainted with the facts, that he had insufficient time to prepare his appeal, that it is unfair to require him to carry the burden of proof, and that it is counter to the public interest to jeopardize resources in this way. Appellant requested a stay of the BLM Decision.

[1] A mining claim located on land closed to entry under the mining laws confers no rights to the locator and is properly declared null and void ab initio. See, e.g., Lucian B. Vandegrift, 137 IBLA 308 (1997); Merrill G. Memmott, 100 IBLA 44 (1987). However, it is improper for BLM to declare a lode mining claim null and void ab initio in its entirety where it is located only partially on withdrawn land. Raymundo J. Chico, 115 IBLA 4, 5 (1990); James N. McDaniel, 105 IBLA 40, 43 (1988). See also Kaiser Steel Resources, Inc., 135 IBLA 340, 342 (1996); Butte Lode Mining Co., 131 IBLA 284, 288-89 (1994); Santa Fe Mining, Inc., 79 IBLA 48, 51-52 (1984). The stated basis for the BLM Decision here was that the land on which the claim was located was designated as part of the National Wilderness Preservation System pursuant to Pub. L. No. 96-560, 94 Stat. 3266, on December 22, 1980. In accordance with the Wilderness Act, the lands designated as wilderness by Pub. L. No. 96-560 were withdrawn from the operation of the mining laws effective January 1, 1984. Thus, to the extent Appellant's claim located November 16, 1993, is situated within the designated wilderness area, it is null and void ab initio.

However, Pub. L. No. 96-560 does not specify the precise lands designated. Instead, the statute refers to a proposed map. No such official map, or critical portion of one, or reference to such a map appears in this file to delineate the precise boundary of the wilderness area vis-a-vis

this claim. ^{1/} Further, the approximate location of Appellant's claim is not printed onto the plat map in the case file. The approximate location was drawn on by some unknown person. The position drawn is similar to the position Appellant drew on the diagram on his location notice, but Appellant's diagram indicates that more of the claim overlaps into sec. 7, which could place more of the claim outside the wilderness area than BLM's drawing. Because neither the wilderness boundary nor the exact location of the claim appears with certitude, the record in this case does not clearly establish that this claim was located entirely inside the wilderness area.

The information provided in this case record indicates that Appellant's claim may straddle the wilderness boundary. The validity of an overlapping claim depends upon whether the claim was supported by discovery on land which is open to mineral entry. Leslie Corriea, 93 IBLA 346, 349 (1986); Timberline Mining Co., 87 IBLA 264, 265 (1985).

Accordingly, the BLM Decision declaring the Harding Falls No. 1 lode mining claim null and void ab initio will be set aside and the case remanded to BLM for a determination of the extent to which this claim is located in the wilderness area. Raymundo J. Chico, *supra*; Amelia Marglin Whitson, 101 IBLA 1, 4 (1988); Noranda Exploration, Inc., 92 IBLA 61 (1986). If the evidence establishes that the lode claim is not located entirely on lands withdrawn from the operation of the mining laws, assuming the discovery point is located outside the withdrawn area, the claim is valid as to that portion located on land not withdrawn, with attendant extralateral rights, ^{2/} all else being proper. In determining the location of the mining claim, its situs on the ground as disclosed by Appellant's monuments will control over any conflicting descriptions or maps. See Outline Oil Corp., 95 IBLA 255, 258-59 (1987); United States v. Kincanon, 13 IBLA 165, 168 (1973).

To the extent Appellant's other arguments on appeal have not been specifically addressed in this Decision, they have been considered and rejected. In view of the outcome in this case, the petition for stay is moot.

Accordingly, pursuant to the authority delegated to the Secretary of the Interior, 43 C.F.R. § 4.1, the Decision of the Colorado State Office

^{1/} We note that in Joe Trow, 123 IBLA 96, 101 (1992), this Board held that the failure to forward boundary designations to Congress as required by legislation designating a wild and scenic river precluded reliance on those boundaries as a basis for requiring a mine plan of operations.

^{2/} The end and side lines of such a claim may be extended across withdrawn land in order to define any extralateral rights to veins which apex within the claim. Raymundo J. Chico, *supra*, at 5 n.3 and cases cited.

declaring the Harding Falls No. 1 Lode mining claim, CMC 246326, null and void ab initio is set aside, and the case is remanded for further action in accord with this Decision.

James P. Terry
Administrative Judge

I concur:

Gail M. Frazier
Administrative Judge

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